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8 Attorneys for Defendants
City of San Jose and Debra Figone, in Her
9 Official Capacity

10 **IN THE SUPERIOR COURT FOR THE**
11 **COUNTY OF SANTA CLARA**

12 SAN JOSE POLICE OFFICERS
ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE, BOARD OF
16 ADMINISTRATION FOR POLICE AND
FIRE RETIREMENT PLAN OF CITY OF
17 SAN JOSE, and DOES 1-10 inclusive.,

18 Defendants.

19
20 AND RELATED CROSS-COMPLAINT
AND CONSOLIDATED ACTIONS
21
22

Consolidated Case No. 1-12-CV-225926
[AFSCME Case No. 1-12-CV-227864]

*Consolidated with Case Nos. 112CV225928,
112CV226570, 112CV226574, 112CV225926]*

*Assigned for all purposes to the Honorable
Patricia M. Lucas]*

**ANSWER OF DEFENDANTS CITY OF
SAN JOSE AND DEBRA FIGONE, IN
HER OFFICIAL CAPACITY AS CITY
MANAGER OF THE CITY OF SAN JOSE
TO FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR WRIT OF
MANDAMUS**

Complaint Filed: June 6, 2012
Trial Date: June 17, 2013

23 Defendants City of San Jose ("City") and Debra Figone, in her official capacity,
24 (collectively, "Defendants") answer and respond to the First Amended Complaint for Declaratory
25 and Injunctive Relief and Petition for Writ of Mandamus ("FAC") filed by Plaintiff American
26 Federation of State, County, and Municipal Employees, Local 101 ("Plaintiff" or "AFSCME") as
27 follows:

28 ///

1 **GENERAL DENIAL**

2 Under the provisions of Section 431.30 of the California Code of Civil Procedure,
3 Defendants deny each and every allegation in the First Amended Complaint for Declaratory and
4 Injunctive Relief and Petition for Writ of Mandamus, and further deny that Plaintiff or its current
5 or former members have been damaged or harmed in any way. Defendants specifically aver that
6 all rights due to Plaintiff and its current or former members were observed, and that there is no
7 basis to award declaratory relief, injunctive relief, or any relief whatsoever.

8 Where appropriate, the term "Plaintiff" herein refers to AFSCME and its current and
9 former members.

10 **FOR THEIR AFFIRMATIVE DEFENSES, DEFENDANTS ALLEGE AS FOLLOWS:**

11 **FIRST AFFIRMATIVE DEFENSE**

12 1. Plaintiff is not entitled to a writ of mandate on the grounds that it has adequate
13 legal remedies; there exists a plain, speedy, and adequate alternative remedy, in the ordinary
14 course of law. (Code Civ. Proc., § 1086.)

15 **SECOND AFFIRMATIVE DEFENSE**

16 2. Plaintiff is not entitled to a writ of mandate on the grounds that there does not exist
17 a clear, present and ministerial duty upon the part of Defendants as alleged by Plaintiff.

18 **THIRD AFFIRMATIVE DEFENSE**

19 3. Plaintiff is not entitled to injunctive relief under California Code of Civil Procedure
20 section 526. (See, e.g., Code Civ. Proc. § 526, subd. (a)(4) & (5), subd. (b)(4), (6) & (7).)

21 **FOURTH AFFIRMATIVE DEFENSE**

22 4. Plaintiff fails to state facts sufficient to constitute grounds for granting any relief to
23 Plaintiff or its current or former members under the statutory and constitutional provisions and
24 common law authority upon which it relies.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 5. Plaintiff's causes of action, and each of them, are barred on the grounds that
27 Plaintiff may not bring actions, or obtain the requested relief, directly under the specified sections
28 of the California Constitution.

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SIXTH AFFIRMATIVE DEFENSE

6. Plaintiff's causes of action, and each of them, are barred on the ground that if Plaintiff, or any of its current or former members, had a vested right to any of the benefits alleged in the FAC (although such is not admitted hereby or herein), then any modification alleged in the FAC is reasonable, in that it is in accord with changing conditions and at the same time maintains the integrity of the City's retirement system, bears some material relation to the theory of a pension system and its successful operation, and to the extent they result in disadvantage to Plaintiff, or any of its current or former members, (although such is not admitted hereby or herein) it was accompanied by comparable new advantages.

SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiff's first cause of action, for impairment of contract, is barred on the ground that no contract existed for all or some of the terms Plaintiff alleges.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiff's first cause of action, for impairment of contract, is barred on the ground that Debra Figone was not a party to any contract with Plaintiff.

NINTH AFFIRMATIVE DEFENSE

9. Plaintiff's first cause of action, for impairment of contract, is barred on the ground that any impairment of Plaintiff's contractual rights (although such is not admitted hereby or herein) was not substantial.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiff's second cause of action, impairment of contract, is barred on the ground that any contractual impairment (although such is not admitted hereby or herein) was reasonable and necessary to serve an important public purpose, including without limitation, insuring the solvency and actuarial soundness of the City's retirement plans.

ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiff's causes of action, and each of them, are barred on the ground that the Plaintiff failed to file a government claim pursuant to California Government Code § 945.4 for damages sought in the prayer for relief, including "any and all actual, consequential and incidental

1 damages according to proof, including but not limited to damages that have been or made [sic] be
2 suffered by plaintiffs and petitioners..." See *Sappington v. Orange Unified School Dist.*, 119
3 Cal.App.4th 949, 955, 14 Cal.Rptr.3d 764 (2004).

4 **TWELFTH AFFIRMATIVE DEFENSE**

5 12. Plaintiff's causes of action, and each of them, are barred on the ground that they are
6 premature and not ripe for adjudication.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 13. Plaintiff's causes of action, and each of them, are barred by the privileges and
9 immunities applicable to public agencies and employees, including without limitation California
10 Government Code §§ 815, 815.2, 815.6, 818, 818.2, 818.8, 820.4, 820.2, 820.6, 820.8, 821, and
11 822.2.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 14. Plaintiff's causes of action, and each of them, are barred on the ground that Plaintiff
14 lacks standing, in whole or in part, to assert the claims alleged in the FAC.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 15. Plaintiff's causes of action, and each of them, as pled in the FAC are uncertain.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 16. Plaintiff's causes of action, and each of them, are barred on the ground that
19 Defendants exercised reasonable diligence to discharge any mandatory duty they may have had
20 with respect to Plaintiff.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 17. Defendants' actions were based on good, sufficient, and legal cause, upon
23 reasonable grounds for belief in their justification, and were taken in good faith and without
24 malice.

25 **EIGHTEENTH AFFIRMATIVE DEFENSE**

26 18. Plaintiff's causes of action, and each of them, are barred by the doctrine of
27 separation of powers in that a court cannot find a vested contractual right in the absence of clear
28 legislative intent to create one.

1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 19. Plaintiff's claims are barred by laches, waiver, estoppel, and/or the statute of
3 limitations: Cal. Civ. Proc. Code § 339 (2 years for unwritten contract); Cal. Civ. Proc. Code §
4 342 (referral to Government Claims Act); Cal. Gov. Code § 911.2 (6 mos. to 1 year to file claims);
5 Cal. Gov. Code § 945.6 (time to file after claim filed).

6 **TWENTIETH AFFIRMATIVE DEFENSE**

7 20. Plaintiff is not entitled to the relief requested on the ground that it would compel an
8 illegal act or violation of duty by a public officer or official.

9 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

10 21. Plaintiff is not entitled to the relief requested on the ground that it would compel
11 Defendants to exercise their discretionary and/or legislative power in a particular manner.

12 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

13 22. Plaintiff is not entitled to the relief requested on the ground that it would abrogate
14 the City's municipal and police powers granted by the California and United States Constitutions
15 and by the San Jose City Charter.

16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

17 23. If Defendants' current or former employees or officers or any of them made
18 promises or representations alleged in the FAC, although such is not admitted hereby or herein,
19 such statements were made outside the scope of employment and not by agents of Defendants and,
20 thus, Defendants are not liable for such acts.

21 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

22 24. To the extent Plaintiff is able to prove its claims, although such is not admitted
23 hereby or herein, Plaintiff had a duty to mitigate any damages to which it may be entitled, but
24 failed to do so.

25 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

26 25. Plaintiff fails to state facts or statutory authority sufficient to entitle it to recover
27 attorneys' fees. Plaintiff is not entitled to attorney's fees under California Civil Code section 52.1,
28 Civil Procedure Code section 1021.5, Government Code section 800, or any other statute.

1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 26. Plaintiff fails to state facts sufficient to constitute grounds to grant the costs of suit
3 incurred herein or for any other relief.

4 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

5 27. Defendants reserve the right to amend this Answer to assert additional affirmative
6 defenses and to supplement, alter or change the Answer and defenses upon revelation of more
7 definitive facts, and upon the undertaking of discovery and investigation in this matter.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Defendants respectfully pray for relief as hereinafter set forth:

- 11 1. That all relief requested in the First Amended Complaint be denied with prejudice;
12 2. That Plaintiff take nothing by its action;
13 3. That judgment be entered in Defendants' favor;
14 4. That Defendants be awarded all costs of suit, including reasonable attorneys' fees; and
15 5. Such further and other relief as the Court deems just and proper.

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17 DATED: March 18, 2013

MEYERS, NAVE, RIBACK, SILVER & WILSON

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20 By: 

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